

Legal Remedies Act when there were a number of options for obtaining a rebate, including one in which a subsequent purchase was not required. *Kramer v Intuit, Inc.* (2004) 121 CA4th 574, 581, 18 CR3d 412. Nor is there is a violation of CC §1770(a)(17) when a rebate offered in a wireless service store requires the purchaser of a wireless phone to activate the phone with the wireless service provided in that store. *Pollard v Ericsson, Inc.* (2004) 125 CA4th 214, 221, 22 CR3d 496.

#### **F. [§5.32] Demand for Rectification; Good Faith Defense**

Thirty days or more before an action for damages is commenced, the plaintiff must serve a written demand on the seller, by certified or registered mail, return receipt requested, stating the alleged unlawful method, act, or practice and demanding rectification. CC §1782(a). The seller then has 30 days in which to rectify. Timely correction, repair, or replacement bars an action for damages by the plaintiff. CC §1782(b). Strict compliance with this notice requirement is required before the buyer may commence an action against the seller; however, the seller may waive the notice. *Outboard Marine Corp. v Superior Court* (1975) 52 CA3d 30, 124 CR 852. The plaintiff may bring an action for injunctive relief without complying with CC §1782(a). CC §1782(d). But see CCP §116.220(b), limiting equitable relief in small claims court to rescission, restitution, reformation, and specific performance.

Although intent or good faith is not relevant in determining whether an act is unlawful, the seller is not liable for damages when it can prove that the violation was unintentional and resulted from a bona fide error despite the use of reasonable procedures adopted to avoid such errors, and makes appropriate rectification. CC §1784.

### **VI. MOTOR VEHICLES**

#### **A. Rees-Levering Motor Vehicle Sales and Finance Act (CC §§2981–2984.4)**

##### **1. [§5.33] Scope of Act**

The Rees-Levering Act applies to substantially all sales and certain bailments of motor vehicles to consumers, except mobilehomes. CC §§2981, 2981.5. It applies to the retail installment sale of an off-highway motor vehicle that is required to be registered or identified under the Vehicle Code. 71 Ops Cal Atty Gen 167 (1988) (the retail installment sale of off-highway motor vehicles exempt from registration or identification is subject

to the Unruh Act (see §§5.3–5.8). The Act’s purpose is to protect purchasers and lessees against excessive charges by requiring full disclosure of all items of cost in conditional sale contracts and lease agreements. *Stasher v Harger-Haldeman* (1962) 58 C2d 23, 29, 22 CR 657; *Hernandez v Atlantic Fin. Co.* (1980) 105 CA3d 65, 69, 164 CR 279. However, loans obtained from “supervised financial organizations” (CC §2982.5(a)) or private loans arranged independently by the buyer (105 CA3d at 70) are not subject to the Act.

## **2. [§5.34] Contract Requirements**

Conditional sale contracts subject to the Act must be in writing, and if printed, be in at least six-point type and contain in a single document all of the buyer’s and seller’s agreements as to the total cost and the terms of payment, signed by the buyer and the seller. A copy must be furnished to the buyer by the seller at the time they sign it and before the motor vehicle is delivered. CC §2981.9. In addition, the contract must contain the following:

- The disclosures required by Regulation Z. CC §2982.
- Specified disclosures which must be labeled “itemization of the amount financed.” CC §2982(a)–(c).
- A brief description of any property being traded in as part of the downpayment. CC §2982(d).
- The names and addresses of all persons to whom certain notices are required to be sent. CC §2982(e).
- An identification of the type of finance charge used and the method of computing the unearned finance charge if prepayment in full is made. CC §2982(f).
- A notice to the buyer in bold type not to sign the agreement before reading it or if it contains any blank spaces to be filled in, that the buyer is entitled to a completely filled in copy of the agreement, that the buyer has the right to prepay the full amount due and receive a partial refund of the finance charge, and that the vehicle may be repossessed on default, in which case the buyer might be liable for a deficiency. CC §2982(g).
- Notice to the buyer in bold type containing specified language that complaints concerning unfair or deceptive practices or methods by the seller should be first referred to the seller, and if not resolved, then to the Department of Motor Vehicles. CC §2982(h).

- An itemization of any insurance included as part of either the amount financed or the finance charge. CC §2982(i).
- A notice that there is no cooling off period. CC §2982(r).
- A warning in red bold type, which must be signed or initialed by the buyer, regarding insurance. CC §2984.1.
- A notice stating whether the vehicle is “new” or “used.” CC §2982(q).

Any information required to be disclosed by the Act in a conditional sale contract may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, except that permitted by §226.18(c)(2) of Regulation Z. CC §2982(m).

If a purchase order is used in a conditional sale pending execution of the contract, it must conform to the disclosure requirements of CC §§2982(a) and 2984.1, and CC §2982(m) is applicable to it. CC §2981(l).

### **3. [§5.35] Prohibited Acts and Terms**

The following provisions may not be included in any contract subject to the Act:

- A finance charge determined in part by the precomputed basis and in part by the simple interest basis, except as permitted by CC §2982.8(a) and (c). CC §2981.8.
- A finance charge exceeding that permitted under CC §2982(j), 2982.3(b)–(c).
- A delinquency charge for a default in payment for a period of less than ten days or in an amount exceeding five percent of the delinquent installment. CC §2982(k).
- A penalty for prepayment in full. CC §2982(l). If the buyer makes prepayment in full, the seller may compute the unearned finance charge to be refunded in several ways, including the “Rule of 78s.” CC §2982(l); *Drennan v Security Pac. Nat’l Bank* (1981) 28 C3d 764, 170 CR 904; see §6.7 for discussion of the Rule of 78s.
- The inclusion of title to or a lien on property other than the motor vehicle, any replacement of the motor vehicle, or the proceeds of the vehicle insurance, credit insurance, or service contract, unless the seller assisted the buyer in obtaining a loan on security from a third party under CC §2982.5(b). CC §2984.2.

- An acceleration of maturity of the debt absent default by the buyer. CC §2983.3(a).
- An agreement by the buyer not to assert claims or defenses arising out of the sale against either the seller or the seller's assignee. CC §2983.7(a).
- A power of attorney to confess judgment or an unlawful assignment of wages. CC §2983.7(b).
- A waiver of the right to sue for illegal acts done in collection or repossession. CC §2983.7(c).
- A power of attorney appointing the seller or holder of the contract as the buyer's agent for collection or repossession. CC §2983.7(d).
- Relief of the seller from liability for any legal remedies the buyer may have against the seller. CC §2983.7(e).
- A grant to the holder or seller of a right to bring an action in an improper venue. CC §2983.7(f). See also §5.39.

For contracts entered into on or after January 1, 1983, the finance charge must be determined on the simple interest basis if the final installment due, under the original contract, is more than 62 months after the date of the contract. CC §2981.7.

The seller is prohibited by the Act from performing certain acts including the following:

- Obtaining the buyer's signature to a contract with blank spaces to be filled in later. CC §2981.9.
- Inducing a contract by offering a rebate, discount, commission, or other consideration contingent on the happening of a future event, *e.g.*, that the buyer make or assist in making a future sale. CC §2982.1.
- Charging for the extension or deferment of a scheduled payment unless the agreement for the extension or deferment is in writing and signed by the parties. CC §2982.3(a). The seller, in an effort to collect a delinquent installment, may advise the buyer either in writing or orally that the due date will be extended with no charge other than any applicable late charge provided for by the contract. CC §2982.3(a).
- Failing to maintain for at least seven years or the length of the contract all relevant documents such as the conditional sales contract and the documents relied on to determine the buyer's creditworthiness. CC §2984.5(a).

See CC §2982.5(d), regarding the seller's assisting the buyer in obtaining a loan from a third party. See also the discussion in *Hernandez v Atlantic Fin. Co.* (1980) 105 CA3d 65, 164 CR 279.

#### **4. [§5.36] Repossession, Redemption, and Reinstatement**

Under no circumstances can the seller repossess the vehicle unless the buyer is in default of contractual obligations. CC §2983.3(a). Regardless of any contract terms to the contrary, the seller or holder must give 15 days' personal notice of intent to dispose of a repossessed vehicle to all persons liable on the contract, except when the vehicle was seized by a public agency, as specified. CC §2982.3(a). The buyer cannot be liable for a deficiency judgment unless proper notice is given within 60 days after repossession. CC §2983.2. See also §5.40.

The notice of intent to dispose of a repossessed vehicle must advise all persons liable on the contract of their rights to redeem the vehicle, reinstate the contract, request a 10-day extension of the redemption and reinstatement periods, and request a written accounting of the disposition, and must give notice of the buyer's possible liability for a deficiency. CC §2983.2(a)(1)–(8). The seller or holder must provide a full accounting for the disposition of the vehicle to any person liable on the contract on written request or if there is a surplus. CC §2983.2(b)–(c).

The buyer has the right to reinstate the contract by the methods provided in CC §2983.3(d), unless the seller reasonably and in good faith denies the right for one of the statutorily specified reasons. CC §2983.3(b). The buyer may exercise the right to reinstate only once in any 12-month period and only twice during the contract period. CC §2983.3(c). If the seller is unable to prove that a denial of the right was reasonable and made in good faith, the seller is not entitled to a deficiency. CC §2983.3(e); see also §5.40 for discussion of deficiency payments. However, it shall not be presumed that the buyer is entitled to damages if the seller fails to sustain the burden of proof that the denial of the right to reinstatement was reasonable and made in good faith. CC §2983.3(e).

If a creditor requires that there be a cosigner, no costs may be recovered from that cosigner unless the creditor gives the cosigner written notice of delinquency before repossession. CC §2983.35.

Civil Code §§2983.2 and 2983.3 do not apply to vehicle loans made by a lender under the Personal Property Brokers Law or the Consumer Finance Lenders Law (see §§5.21–5.25). However, Fin C §§22465, 22465.5, 24465, and 24465.5 have provisions virtually identical to CC §§2983.2 and 2983.3.

#### **5. [§5.37] Correction of Violations**

Under CC §2984, the seller may correct nonwillful violations of the Act

at any time before suit. Willful violations that appear on the face of the contract may also be corrected within 30 days of the contract's execution or within 20 days of its sale, assignment, or pledge, whichever is later. If notified by the buyer of a violation, the seller must correct it within 10 days of the notice. The buyer must concur in writing with any correction that increases the amount of the contract balance or the amount of any installment. A violation of any kind which is properly corrected may not be the basis of any recovery by the buyer or affect the enforceability of the contract by the seller.

#### **6. [§5.38] Relief Available**

The buyer has the following relief available:

- Refund of all payments made if the contract is not executed. CC §2982.7(a).
- Recovery of a vehicle given in downpayment or the greater of its fair market value or value as stated in the contract if the seller breaches the contract. CC §2982.7(b).
- Rescission and restitution of any consideration if the buyer is unable to obtain third party financing. CC §§2982.5(b), 2982.9.
- Rescission and full restitution, if the seller violates CC §2981.9, §2982(a), §2982(j), or §2982(k), unless the violation was the result of an accidental or bona fide error in computation. CC §2983.
- Recovery of three times the amount of the finance charge paid if the seller violates CC §2982(l), unless the violation was the result of an accidental or bona fide error of computation. CC §2983.1.
- Redemption and reinstatement. See §5.36.
- Reasonable attorneys' fees and costs if the buyer is the prevailing party in any action brought on a contract or purchase order under the Act. CC §2983.4.
- Civil penalty of \$5000 per violation if the seller fails to comply with a court order to produce a relevant document that was required to be saved under CC §2984.5(a). CC §2984.5(b).

In addition, the buyer may bring an action for conversion arising from the right to reinstate the contract and interference with that right. *Cerra v Blackstone* (1985) 172 CA3d 604, 218 CR 15.

It is within the court's discretion to determine whether a defendant in a deficiency action brought under the Rees-Levering Motor Vehicle Sales and Finance Act (CC §§2981–2984.4) is the prevailing party for purposes of obtaining attorneys' fees under CC §2983.4 when the plaintiff had voluntarily dismissed the underlying action. *Damian v Tamongdong* (1998) 65 CA4th 1115, 1128–1130, 77 CR2d 262. Whether the defendant is the prevailing party will depend on the motive for dismissal, *e.g.*, if the plaintiff dismissed after obtaining a settlement or dismissed because of the defendant's insolvency, then the defendant would not be the prevailing party. *Damian v Tamongdong, supra*, 65 CA4th at 1129.

#### **7. [§5.39] Venue Requirement**

The proper court for all actions under the Act is the superior court in the county in which (a) the contract was signed by the buyer, (b) the buyer resided at the time the contract was executed, (c) the buyer resides at the commencement of the action, or (d) the motor vehicle purchased is permanently garaged. CC §2984.4(a). In an action with multiple claims or causes of action, venue is proper in any of these superior courts if there is at least one claim or cause of action arising from a contract subject to the Act. CC §2984.4(a). The proper court location for trial is the location where the court tries that type of action that is nearest or most accessible to where (a) the buyer signed the contract, (b) the buyer resided at the time the contract was executed, (c) the buyer resides at the commencement of the action, or (d) the motor vehicle is permanently garaged. Otherwise, any location of the superior court is the proper court location for the trial. CC §2984.4(b).

The plaintiff must file concurrently with the filing of the complaint an affidavit or verified complaint that states facts showing the action has been commenced in the proper superior court division at the proper court location. If the plaintiff fails to do so, the court must, on its own motion or the motion of any party, dismiss the action without prejudice; however, the court may, on such terms as may be just, allow the affidavit to be filed after the complaint was filed and have a copy of it served on the defendant. CC §2984.4(c). Some judges think this affidavit requirement is not applicable in small claims court. See §5.8.

#### **B. [§5.40] Deficiency Judgments**

Most often deficiency judgments are obtained by default. These should be handled by the judge and not by the clerk, as are all uncontested hearings in small claims court. See *Liberty Loan Corp. v Petersen* (1972) 24 CA3d 915, 919, 101 CR 395. In addition to the usual procedure to be followed in default hearings (see §4.16), the court should determine whether



- Venue is proper. See CC §2984.4; §5.39.
- The contract complies with the requirements of the Act. See §§5.33–5.34. No deficiency judgment can be granted after any sale or other disposition of a motor vehicle unless the court has determined it was in conformity with the provisions of the Rees-Levering Act and the relevant provisions of Com C §§9101–9715 (see specifically §§9610–9615 and 9626, which set forth the requirements of a good-faith, commercially reasonable sale and disposal of collateral). CC §2983.8(b). The court may make these determinations on an affidavit or may require a hearing in a particular case. CC §2983.8(b). Most judges feel that it is impossible to make these determinations fairly based only on an affidavit and therefore they require a hearing.
- There has been compliance with the notice requirements as to time, service, and content. See *Backes v Village Corner, Inc.* (1987) 197 CA3d 209, 242 CR 716. See also §5.35. Notice problems are quite common in these cases.
- The reasons given are valid if the notice states that the buyer does not have the right to reinstate. CC §2983.3(b). The seller has the burden of proving that the denial of reinstatement was reasonable and made in good faith. CC §2983.3(e). However, it shall not be presumed that the buyer is entitled to damages if the seller fails to sustain that burden. CC §2983.3(e).
- The resale of the repossessed vehicle was conducted in a commercially reasonable manner. Com C §9504(3); see *Credit Bureau Metro, Inc. v Mims* (1975) 45 CA3d Supp 12, 15, 119 CR 622; *Liberty Loan Corp. v Petersen, supra*. The court should inquire into the manner of sale and the fairness of the price. Sales made below blue book price or not made on the open market should be closely examined. The creditor's failure to comply with the requirements of Com C §9504(3) precludes recovery of a deficiency judgment. *Ford Motor Credit Co. v Price* (1985) 163 CA3d 745, 210 CR 17; *Western Decor & Furnishings Indus., Inc. v Bank of America* (1979) 91 CA3d 293, 154 CR 287. Every aspect of the sale must be commercially reasonable, including the method, manner, time, and terms of sale, and the creditor has the burden of proving compliance with these requirements. *Credit Bureau Metro, Inc. v Mims, supra*. See also *General Elect. Credit Corp. v Bo-Mar Constr. Co.* (1977) 72 CA3d 887, 140 CR 417.
- The expenses claimed in connection with the repossession and sale are reasonable. Com C §9504(1)(a). The judge should carefully examine



charges for repairs, reconditioning, storage, or commissions. If there is any doubt about the reasonableness of any expenses claimed, the judge may ask for additional proof or consult an independent expert. See §4.22.

- All unearned finance charges and insurance premiums as of the date of repossession have been credited. Fin C §22480; CC §1806.3. See also §6.7.

A creditor must comply with the relevant provisions of both the Rees-Levering Act and the California Uniform Commercial Code in giving a debtor proper notice of a public sale; without compliance, the creditor is precluded from obtaining a deficiency judgment. *Bank of America v Lallana* (1998) 19 C4th 203, 210, 77 CR2d 910.

Ordinarily no deficiency judgment is allowed on mobilehome sales. CC §2983.8.

### **C. Automotive Repair Act (Bus & P C §§9880–9889.22)**

#### **1. [§5.41] Scope of Act**

The Automotive Repair Act was enacted to foster fair dealing, to promote safety, and to eliminate misunderstandings in transactions involving automotive repairs. 55 Ops Cal Atty Gen 276, 278 (1972). It also prevents auto repair businesses from obtaining possession of a vehicle by saying repair work will be done at a figure agreeable to both parties but later charging a substantially increased sum. See Bus & P C §§9884.9(a), 9884.16; *Parada v Small Claims Court* (1977) 70 CA3d 766, 768, 139 CR 87.

The Act applies to all persons who, for compensation, engage in the business of repairing or diagnosing motor vehicle malfunctions. See Bus & P C §9880.1(a). This includes those who rebuild automobile parts. See 55 Ops Cal Atty Gen 276 (1972). It also includes restoration work. *Schreiber v Kelsey* (1976) 62 CA3d Supp 45, 49, 133 CR 508. However, it does not apply to those who merely do minor work, *e.g.*, tire repairs or changing minor accessories, such as is customarily done in gasoline service stations. Minor work does not include service that has been found to give rise to a high incidence of fraud or deceptive practices. See Bus & P C §9880.1(e).

For discussion of the law on express warranties on new motor vehicles, see §5.106.

#### **2. [§5.42] Requirements of Act**

The requirements of the Act include the following:

- All auto repair dealers must register with the Department of Consumer Affairs' Bureau of Automotive Repairs. Bus & P C §9884. Failure to

register renders the dealer unlawful (Bus & P C §9884.6) and bars an action on a contract for work done or a lien for labor and materials. Bus & P C §9884.16. See also §5.43.

- All work done, including all warranty work, must be recorded on an invoice separately describing service work and parts supplied and the amounts charged for them. Bus & P C §9884.8. In addition, if used, rebuilt, or reconditioned parts are used by the dealer, the invoice must clearly state that fact, as well as whether any crash parts are original or nonoriginal aftermarket equipment. Bus & P C §9884.8.
- The dealer must give a written estimated price for labor and parts and receive the consumer's authorization, written or oral, before proceeding. Bus & P C §9884.9(a); *Bennett v Hayes* (1975) 53 CA3d 700, 125 CR 825; *Parada v Small Claims Court* (1977) 70 CA3d 766, 769, 139 CR 87. No charge can be collected for unauthorized work or parts. Bus & P C §9884.9(a). If the work will exceed the estimate, additional written, oral, fax, or e-mail authorization must be received before the work is done. If the authorization is oral, the dealer must properly note it on the work order, and also in an acknowledgment of notice and consent signed by the customer. Bus & P C §9884.9(a). For further discussion of the consequences of the dealer's failure to give a written estimate, see §5.43.
- The dealer must notify the customer in the written estimate of any repair work that will be done by someone other than the dealer or the dealer's employees. Such work cannot be done without the customer's consent, unless the customer cannot be reasonably notified. Bus & P C §9884.9(b).
- The dealer must provide an itemized written estimate for parts and labor separately and identify whether the part is new or used, as well as whether the crash part is an original or nonoriginal aftermarket equipment manufacturer crash part when the dealer performs repairs. Bus & P C §9884.9(c).
- On the customer's request at the time the work order is taken, the dealer must, with certain specified exceptions, return replaced parts to the customer when the work is completed. Bus & P C §9884.10.
- Statements that are untrue or misleading, or that the dealer, in the exercise of reasonable care, should know are untrue or misleading, are prohibited. Bus & P C §9884.7(a)(1). This adds little, if anything, to the general law of misrepresentation, but it gives the judge a specific provision to cite when referring a particular repair shop's conduct to the Bureau of Automotive Repairs. See also Bus & P C §9884.7(a)(2)–(10).

### 3. [§5.43] Relief Available

A dealer may not recover on a contract or have the benefit of a lien for labor or materials if the dealer is not registered with the Bureau of Automotive Repairs. Bus & P C §9884.16. The court should require proof of registration in all suits by a dealer for repair work.

The dealer's failure to give the customer a written estimate bars *any* recovery for the work done, the parts supplied, or storage charges, including under an action based on quantum meruit or the common courts, regardless of whether the customer authorized the work. *Donaldson v Doe* (1987) 194 CA3d 817, 239 CR 801; *Bennett v Hayes* (1975) 53 CA3d 700, 125 CR 825. The dealer's failure to give the customer an initial written estimate also bars any recovery for orally authorized increases over the original oral estimate. *Donaldson v Doe, supra*; *Schreiber v Kelsey* (1976) 62 CA3d Supp 45, 133 CR 508.

### D. [§5.44] Liens on Vehicles

Liens taken on vehicles by repair shops are governed by CC §§3067–3075. Before a lien may be taken, the dealer must be registered with the Bureau of Automotive Repairs. Bus & P C §9884.16. No lien in excess of \$750 for work or services, nor any amount in excess of \$400 for storage or safekeeping, is valid against the legal title holder's interest unless the repair shop gave actual written notice to the legal title holder and received the title holder's written consent before performing the work. CC §3068(c)(1).

The lien is extinguished and no lien sale may be conducted unless the lienholder applies for authorization to conduct the lien sale within 30 days after the lien arises (when a statement of charges is presented to the registered owner) or a court action is filed within that period. CC §3068(b). On the procedure for conducting a lien sale, see CC §§3068.1, 3071–3072.

Any portion of a lien that includes charges for the care or storage of a vehicle after 60 days is invalid unless Veh C §§10650 and 10652 have been complied with by the lienholder. CC §3068(c)(2). If the owner requests the release of the vehicle within 24 hours after the vehicle has been placed in storage, the charge is limited to that of one day of storage. If the request is made after the 24-hour period, then charges may be imposed on a full-day basis. CC §3068(c)(3).

In any action brought by or on behalf of the legal owner or lessor to recover a vehicle alleged to be wrongfully withheld by the person claiming a lien under CC §3068, the prevailing party is entitled to reasonable attorneys' fees and costs not exceeding \$1750. CC §3068(d).

The statutory provisions on vehicle liens do not apply to manufactured homes, mobilehomes, or commercial coaches. CC §3062.2.

## E. Vehicle Leasing (CC §§2985.7–2992)

### 1. [§5.45] Statutory Coverage

The vehicle leasing statutes apply to the leasing or bailment of motor vehicles for a term exceeding four months primarily for personal, family, or household purposes, whether or not the lessee bears the risk of the motor vehicle's depreciation. CC §2985.7(d). They do not apply to leasing for agricultural, business or commercial purposes; to a government or governmental agency or instrumentality (CC §2985.7(d)); or to transactions regulated by the Rees-Levering Motor Vehicle Sales and Finance Act (CC §2990; see §§5.33–5.40).

### 2. [§5.46] Statutory Requirements

Under CC §2985.8, lease contracts that are subject to the Vehicle Leasing Act must

- Be in writing. The print portion of the contract must be in at least eight-point type and the contract must contain in a single document all the agreements of the lessor and lessee regarding their obligations. CC §2985.8(a).

A lessor may be held liable for violating the Vehicle Leasing Act if it fails to place all the parties' agreements in a single document. *Kroupa v Sunrise Ford* (1999) 77 CA4th 835, 842–844, 92 CR2d 42.

- Have a title at the top of the lease contract that contains the words **LEASE CONTRACT** or **LEASE AGREEMENT** printed in at least 12-point boldface type. CC §2985.8(b).
- Disclose all the information prescribed by Regulation M, whether or not Regulation M applies to the transaction (see CC §2985.7(e)). CC §2985.8(c)(1).
- Contain a separate statement labeled “Itemization of Gross Capitalized Cost.” CC §2985.8(c)(2). This statement must include such items as the agreed-on value of the vehicle, the total amount of insurance premiums to be included, the total amount charged for service contracts, any outstanding prior credit or lease balance, and a listing of other items included in the “gross capitalized cost” disclosed under Regulation M. See CC §2985.7(e)–(f). CC §2985.8(c)(2).
- Include the leased vehicle's identification number. CC §2985.8(c)(3).
- Contain a brief description of each vehicle or other property being traded

in and specify the agreed-on value of the vehicle or other property if the amount due at signing or delivery is going to be paid with a net trade-in allowance or if the itemization of “Gross Capitalized Cost” includes a portion of the outstanding prior credit or lease balance from the trade-in property. CC §2985.8(c)(4).

- Include any fee to be retained by the lessor for document preparation. The fee may not exceed \$45 and may not be represented as a governmental fee. CC §2985.8(c)(5).
- Contain (in at least eight-point boldface type) the warning notice required by CC §2985.8(d), the “no cooling off period” notice as required by CC §2985.8(e), and the statement regarding the return and refund policy as required by CC §2985.8(f).
- Be signed by the lessor and lessee or their authorized representatives. An executed copy of the lease must be provided to the lessee at the signing. CC §2985.8(g).
- Contain on the first page of the contract (in at least eight-point boldface type) a “Gap Liability Notice” if the lessee will be responsible for the difference between the amount due on early termination of the lease and the amount of any insurance proceeds if the vehicle was stolen or completely destroyed. CC §2985.8(j).

No motor vehicle may be delivered until the lessor provides the lessee with an executed copy of the lease contract. CC §2985.8(h). A number of documents, including an express warranty, titling or transfer document, insurance policy, and service contract, however, need not be contained in a lease contract. CC §2985.9.

Under CC §2985.71, if a solicitation to enter into a lease includes the amount of any payment or a statement regarding when that payment or other payment is due (*e.g.*, at the time the lease is consummated or at the time of delivery), CC §2985.71(a) requires that the solicitation also include the following items (CC §2985.71(b)):

- All the disclosures required by Regulation M, whether or not Regulation M applies to the transaction (see CC §2985.7(e));
- The mileage limit and the charge per mile when the mileage limit is exceeded; and
- The statement “Plus tax and license” or a substantially similar statement if amounts due for use tax, license fees, and registration fees are not included in the lease payments.

A solicitation for a lease of any motor vehicle may not state that a specific lease at specific amounts or terms is available unless the lessor customarily leases or will lease at those amounts or terms. CC §2985.71(c).

A lessor's violations of CC §2985.71 do not affect the validity of the lease contract or subject the owner or advertising agency personnel to civil liability. CC §2985.71(d).

When a lease is being assigned, a prospective assignee who provides a lessor with a preprinted form for a lease contract must, on request, provide a Spanish language translation of that form. CC §2991. The prospective assignee must also design the form in such a manner as to leave a space for the lessor to include all disclosures. CC §2992.

### **3. [§5.47] Early Termination**

Under CC §2987, the lessee may terminate a lease contract at any time before the date specified in the contract. CC §2987(a). However, the lessee will be liable for any unpaid lease payments that were due before the termination as well as any other amounts that were due and unpaid at the time of termination. CC §2987(b). The lessor may also charge the lessee reasonable fees for early termination including a disposition fee and a reasonable purchase option charge if the lessee terminates and purchases the vehicle. CC §2987(b)–(c), (f). The lessor may also charge the lessee the difference between the adjusted capitalized cost disclosed in the contract and the sum of (1) all depreciation amounts through the date of early termination and (2) the realized value of the vehicle. CC §2987(b)(5). See CC §2985.7(f) regarding the calculation of depreciation amounts and CC §2987(c) regarding determining realized value. In the event the lessee defaults on the lease, the lessee may be liable for reconditioning, repossessing, and storing the vehicle. CC §2987(b)(4).

If the realized value of the vehicle is established through the lessor's disposition of the vehicle, the lessor must act in good faith and in a commercially reasonable manner, and must comply with the notice requirements of CC §2987(d). CC §2987(d)(1)–(2). If the lessor fails to comply with these notice requirements, the lessee is generally not liable for the above-stated costs. CC §2987(d)(3).

Within 30 days, the lessor must return to the lessee any security deposit or advance payment that is remaining after deducting the allowed fees and charges under CC §2987. CC §2987(e). Finally, the lessor may not send any adverse information to a consumer credit reporting agency if the lessee terminates the lease early, voluntarily returns the vehicle, and timely pays all amounts required under the lease contract up to the date of termination. CC §2987(g).

These provisions on early termination liability do not apply if the lessee terminates the lease early and purchases the vehicle or trades it in following the purchase or lease of another vehicle. CC §2987(f).

#### **4. [§5.48] Prohibited Acts and Terms**

The lessor may not include any of the following provisions in a lease contract subject to the statutes:

- A power of attorney to confess judgment or an unlawful assignment of wages. CC §2986.3(a).
- A waiver of any right of action against the lessor for any illegal acts done in collection or repossession. CC §2986.3(b).
- Relief of the lessor from liability for any legal remedies the lessee may have against the lessor. CC §2986.3(c).
- A grant to the lessor of a right to bring an action on a lease contract in an improper venue. CC §2986.3(d).
- The inclusion of title to or a lien on any personal or real property, other than the vehicle that is the subject matter of the lease contract, as security for the payment of the contract obligations. CC §2989.6.

The lessor is also prohibited from performing the following acts:

- Obtaining the lessee's signature to a contract with blank spaces to be filled in later. CC §2985.8.
- Leasing a used vehicle that does not meet all the equipment requirements of Veh C §§24000–24015. CC §2986.5(a).
- Failing to return to the lessee excess amounts paid by the lessee for licensing or transfer of title, whether or not the lessee requests it. CC §2986.5(b).
- Inducing or attempting to induce a contract by offering a rebate, discount, commission, or other consideration on the condition the lessee give information or assistance to the lessor to make a lease or sale to another. CC §2986.12.
- Failing to refund an advance payment to the lessee if the lease contract is not executed. CC §2986.13(a).
- Failing to register the leased vehicle pursuant to the lease contract. CC §2989.4(a)(1).



- Advertising any specific vehicle in the lessor's inventory without identifying the vehicle by its identification or license number. CC §2989.4(a)(2).
- Refusing to lease a vehicle to any creditworthy person at the advertised total price, exclusive of sales tax, registration fees, and finance charges. CC §2989.4(a)(3).

The lessor is not subject to civil liability for a violation of CC §2989.4. CC §2989.4(b).

### **5. [§5.49] Relief Available**

A lessor who fails to comply with any requirement imposed under CC §2985.8 (lease contract contents; see §5.46) or §2988 (reasonable, good faith approximation of vehicle's residual value; see §5.46) is liable to the lessee for (a) actual damages, (b) 25 percent of the total amount of monthly lease payments, but not less than \$100 or more than \$1000, and (c) costs and reasonable attorney's fees. CC §2988.5(a). Class action relief is also available under CC §2988.5(a)–(b). However, the lessor is not liable under CC §2988.5 if the lessor (a) notifies the lessee of the error and makes adjustments necessary to correct the account within 15 days after discovering the error and before the lessee institutes an action or sends the lessor written notice of the error, (b) shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error despite the maintenance of procedures reasonably adopted to avoid such errors, or (c) shows that the violation was committed in good faith conformity with a rule, regulation, or interpretation of federal law, even if the rule, regulation, or interpretation was later amended, rescinded, or determined to be invalid. CC §2988.5(c)–(d), (g). The lessee is entitled to only a single recovery even for a lessor's multiple failure to disclose required information, but if the lessor continues to fail to disclose after a recovery has been granted, the lessee is entitled to additional recoveries. CC §2988.5(h).

Once the lessee has obtained a judgment against the lessor, the lessee may offset the amount recovered under CC §2988.5(a)(2) (25 percent of total payments, between \$100 and \$1000) against any amount still owing to the lessor. CC §2988.5(f). If the lessor fails to comply with CC §2985.8, the lessee may also elect to rescind the contract if the violation was willful, or if the correction will increase the contract amount, unless the lessor waives collection of the increased amount. CC §2988.7.

The court must award reasonable attorneys' fees and costs to the prevailing party in any action on a lease contract covered by these statutes. CC

§2988.9. Actions alleging failure to comply with the statutory requirements must be brought within one year of the lease contract's termination. CC §2988.5(i). A lessee's filing of a federal civil action based on facts that give rise to a similar state civil action bars the lessee from later filing a state action against the lessor. CC §2989.

If a lessor breaches the contract and the lessee has left his or her vehicle with the lessor as a trade-in downpayment and the lessor fails to return the vehicle, the lessee may recover from the lessor either the fair market value of the vehicle or its value as stated in the lease contract, *whichever is greater*. CC §2986.13(b). This remedy does not prevent the lessee from pursuing any other remedy to which he or she may be entitled. CC §2986.13(c). See also CC §§2988.5 and 2988.7 regarding the lessee's remedies when the lessor fails to meet the contract disclosure requirements of CC §2985.8.

A lessee with a cause of action under these statutes against a lessor may maintain it against the lessor's assignee if the violation was apparent on the contract's face, unless the assignment was involuntary. CC §2988.5(e). The lessor's assignee is subject to all of the lessee's equities and defenses against the lessor, but the assignee's liability may not exceed the amount of the obligation owing to the assignee at the time of assignment. CC §2986.10(a). The assignee has recourse against the lessor for any liability incurred to the lessee regardless of whether the assignment provided for recourse. CC §2986.10(b). For a consumer to have rights against an assignee of the lessor under CC §2988.5(e), the violation must have appeared on the face of the lease agreement. *LaChappelle v Toyota Motor Credit Corp.* (2002) 102 CA4th 977, 989, 126 CR2d 32.

A bank that provided the credit application and lease forms to the dealer, financed the vehicle lease, and accepted assignment of the lease from the dealer was not a lessor under the Vehicle Leasing Act and is therefore not liable for misrepresentation under that Act. *Bescos v Bank of Am.* (2003) 105 CA4th 378, 388–391, 129 CR2d 423. A dealer does not act as the financing agency's agent merely because the dealer used forms supplied by the financing agency. *LaChappelle v Toyota Motor Credit Corp.*, *supra*, 102 CA4th at 992.

## 6. [§5.50] Federal Law

Automobile leasing is also covered by the federal Consumer Credit Cost Disclosure Act, 15 USC §§1601–1677. The Federal Reserve Board has promulgated regulations under the Act, at 12 CFR Pt 213.

The coverage of the federal Act is the same as state law (see §5.45), with two exceptions. The Consumer Credit Cost Disclosure Act covers all

personal property leases, not just automobiles, but is limited to those transactions with a total contractual obligation of \$25,000 or less.

The requirements of the federal Act as to both advertising and disclosures are similar but not identical to the state Act (see §§5.47–5.48). The remedies, too, are similar, with the same statutory penalty of 25 percent of the lease payments, with a maximum of \$100,000 and a minimum of \$1000 (see §5.48). State law limits the consumer to one recovery, either federal or state, but does not permit both. CC §2989.

#### **F. [§5.51] Rental Car Companies (CC §1936)**

The terms and conditions under which a rental car company may rent a passenger vehicle to a person are regulated by CC §1936. It specifies the conditions under which the renter may be liable for damages or loss of the rental vehicle (CC §1936(b)) and specifies the limits of that liability (CC §1936(c), (d)). A rental company may not require the purchase of a damage waiver or optional insurance. CC §1936(k). Waiver of any of the provisions of the section is void and unenforceable as contrary to public policy. CC §1936(s). A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for violation of the section, and the prevailing party is entitled to recover reasonable attorneys' fees and costs. CC §1936(q). A rental company bringing an action against a renter because of theft of the vehicle must bring the action in the county in which the renter lives, or in the case of a nonresident renter, in the jurisdiction where the renter resides. CC §1936(r).

Civil Code §1936(n)(2) authorizes a rental car company to charge for any of its services, provided the renter is able to avoid the charge by declining the service. This statute, however, does not insulate against charges of fraudulent practices under the Unfair Competition Law (Bus & P C §§17200–17210) when the charge is presented in a confusing or deceptive manner. See *Schnall v Hertz Corp.* (2000) 78 CA4th 1144, 1170, 93 CR2d 439 (per gallon rate for refueling may not have clearly been provided to car renters). Distinguishing *Schnall*, one court has held that when the car rental company clearly sets out the various payment options in boldface in the rental agreement provided at the time of rental, former CC §1936(m)(2) (now CC §1936(n)(2)) will protect the company from an unfair competition claim. *Shvarts v Budget Group, Inc.* (2000) 81 CA4th 1153, 1160, 97 CR2d 722.